Lee Heng Moy (p) v Oriental Capital Assurance Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–1249 OF 2004
LOW HOP BING, KN SEGARA AND SULAIMAN DAUD JJCA
6 NOVEMBER 2009

Civil Procedure — Interpleader summons — Application for — Whether interpleader summon appropriate remedy — Whether interpleader issue shown — Whether order made upon interpleader summons irregular

The insured, one Tan Hock Low (deceased), during his life time effected Insurance Policy No D99DCPMPA000025 ('the said insurance policy') on 7 January 2002. The insured was killed by persons unknown on 2 January 2003. Question arose as to whom the said insurance policy was payable: the first defendant/second respondent named as beneficiary upon the policy and described as the wife, or the second defendant/appellant who was his lawful wedded wife. The plaintiff/first respondent insurance company filed this originating summons praying that the defendants appear and state the nature and particulars of their respective claims to the proceeds payable under the said insurance policy in dispute and maintain or relinquish the same and abide by such order of the court. The originating summons was filed by way of interpleader under O 17 rr 1 and O 17 rr 3 of the Rules of the High Court 1980. Apart from the aforesaid prayer, no other order was sought. The High Court ordered that the sum insured be paid to the first defendant and that the costs of the application be paid by the second defendant. Hence this appeal by the second defendant. The common ground in the submissions of the respective learned counsel made it abundantly clear that there was no interpleader issue.

Held, allowing the appeal with costs to be borne by the plaintiff:
The orders made by the learned judge, without any interpleader issue, was completely irregular and a misdirection occasioning a miscarriage of justice. Therefore the order made by the court below was set aside and replaced by an order that the proceeds under the said insurance policy released to the first defendant by the plaintiff be returned by the first defendant to the plaintiff (see para 12).

[Bahasa Malaysia summary

Tan Hock Low, pengambil insurans ('si mati'), semasa hidupnya mengambil Polisi Insurans No D99DCPMPA000025 ('polisi insurans') pada 7 Januari 2002. Pengambil isurans tersebut dibunuh oleh orang-orang yang tidak

dikenali pada 2 Januari 2003. Persoalan berbangkit bahawa kepada siapa polisi insurans tersebut patut dibayar: defendan pertama/responden kedua yang dinamakan sebagai benefisiari ke atas polisi tersebut dan dinyatakan sebagai isteri, atau defendan kedua/perayu yang adalah isteri sah yang dikahwininya. Plaintif/responden pertama syarikat insurans memfailkan saman pemula ini memohon bahawa defendan-defendan tampil dan nyatakan sifat dan butir-butir tuntutan-tuntutan masing-masing kepada keuntungan yang boleh dibayar di bawah polisi insurans tersebut yang dipertikaikan dan mengekalkan atau melepaskannya dan menurut perintah mahkamah sedemikian. Saman pemula difailkan melalui interplider di bawah A 17 k 1 dan A 17 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980. Selain daripada permohonan tersebut, tiada perintah lain dipohon. Mahkamah Tinggi memerintahkan bahawa jumlah yang diinsuranskan tersebut dibayar kepada defendan pertama dan bahawa kos permohonan dibayar oleh defendan kedua. Maka rayuan ini oleh defendan kedua. Alasan biasa dalam hujahan peguam bijaksana amat jelas menunjukkan bahawa tidak terdapat isu interplider.

Diputuskan, membenarkan rayuan dengan kos ditanggung oleh plaintif: Perintah-perintah yang dibuat oleh hakim yang bijaksana, tanpa apa-apa isu interplider, adalah sesungguhnya luar aturan dan salah arah yang menyebabkan ketidakadilan. Oleh itu, perintah yang dibuat oleh Mahkamah Tinggi diketepikan dan digantikan dengan perintah bahawa keuntungan di bawah insurans polisi tersebut dibayar kepada defendan pertama oleh plaintif dikembalikan oleh defendan pertama kepada plaintif (lihat perenggan 12).]

Notes

For a case on application for, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) para 4052.

Appellant – In person.
(TS Oon & Partners) for the respondent.
(Wong & Associates) for the second respondent.

Low Hop Bing JCA:

APPEAL

[1] On 4 October 2004, the Kuala Lumpur High Court ordered that the sum insured be paid to Tan Pui Sim (f) who is the second respondent (the first defendant) and that the costs of the application by way of originating summons be paid by Lee Heng Moy (f) (the second defendant).

[2] Being dissatisfied with the decision, the second defendant appealed to this court.

[3] We heard and allowed the appeal on 2 December 2008. We now state our grounds.

FACTUAL BACKGROUND

[4] Vide the originating summons, the plaintiff, Oriental Capital Assurance Bhd as the insurer, prays that:

(1) The Defendants herein appear and state the nature and particulars of their respective claims to the proceeds payable under Insurance Policy No. D99DCPMPA000025 in dispute and maintain or relinquish the same and abide by such Order of this Honourable Court; and

(2) The costs of this application be provided for.

[5] The originating summons was said to have been filed by way of interpleader under O 17 rr 1 and O 17 rr 3 of the Rules of the High Court 1980, as stated in the intitulement to the originating summons. Apart from the aforesaid prayers, no other order was sought.

[6] The insured, one Tan Hock Low (deceased), during his life time, effected the aforesaid insurance policy on 7 January 2002. The insured was killed by persons unknown on 2 January 2003.

[7] The learned judge of the Kuala Lumpur High Court was of the view that the question before him was: 'to whom the policy of insurance is payable: the first defendant named as beneficiary upon the policy and described as the wife, or the second defendant who is his lawful wedded wife.'

[8] After hearing the originating summons, the learned judge made the aforesaid orders.

ABSENCE OF INTERPLEADER ISSUE

[9] Before us, the second defendant appeared in person.

[10] Ms Selva Rani Thiagarajan, learned counsel for the insured, submitted that there was no interpleader issue, but added that the High Court had made the correct orders.

[11] The first defendant's learned counsel, Mr C K Ng, argued that the learned judge of the High Court had made the right orders although no interpleader issue was pleaded. However, he maintained that it was an interpleader summons.

[12] The common ground in the submissions of the respective learned counsel made it abundantly clear to us that there was no interpleader issue. On the basis of these submissions, we took the view that the orders made by the learned judge, without any interpleader issue, is completely irregular and a misdirection occasioning a miscarriage of justice. We therefore allowed the appeal, set aside the orders made by the court below and made the following consequential orders:

(a) The proceeds under the policy of insurance released to the first defendant by the plaintiff, the insurer, be returned by the first defendant to the plaintiff, the insurer, on or before 15 January 2009;

(b) The plaintiff, the insurer, is to bear all the costs here and in the court below, to be paid to both the defendants respectively; and

(c) Deposit to be refunded to the second defendant on account of taxed costs.

Appeal allowed with costs to be borne by plaintiff.

Reported by Kanesh Sundrum